IN THE SUPREME COURT OF TENNESSEE

IN RE:	)	
	)	
PETITION FOR THE ADOPTION OF AMENDED TENNESSEE RULES OF PROFESSIONAL CONDUCT	)	No. M2009-00979-SC-RL1-RL

RESPONSE OF THE TENNESSEE BAR ASSOCIATION TO THE PUBLIC COMMENTS RECEIVED REGARDING PETITION FOR THE ADOPTION OF AMENDED TENNESSEE RULES OF PROFESSIONAL CONDUCT

GAIL VAUGHN ASHWORTH
President,
Tennessee Bar Association
Gideon & Wiseman PLC
200 4th Ave. N., 1100 Noel Place
Nashville, TN 37219

SAM D. ELLIOTT
President Elect,
Tennessee Bar Association
Gearhiser, Peters, Cavett,
Elliott & Cannon, PLLC
320 McCallie Ave.
Chattanooga, TN 37402

GEORGE T. LEWIS, III
Immediate Past President
Tennessee Bar Association
Baker, Donelson, Bearman,
Caldwell & Berkwowitz PC
165 Madison Avenue, Suite 2000
Memphis, TN 38103

BILL HARBISON
General Counsel,
Tennessee Bar Association
Sherrard & Roe, PLC
424 Church Street, Suite 2000
Nashville, TN 37219

ALLAN F. RAMSAUR
Executive Director,
Tennessee Bar Association
221 4th Avenue North, Suite 400
Nashville, TN 37219

BRIAN S. FAUGHNAN
Chair, Tennessee Bar Association
Standing Committee on Ethics
and Professional Responsibility
Adams and Reese LLP
Brinkley Plaza
80 Monroe Avenue, Suite 700
Memphis, TN 38103

LUCIAN T. PERA
Immediate Past Chair, Tennessee Bar Association
Standing Committee on Ethics and
Professional Responsibility
Adams and Reese LLP
Brinkley Plaza
80 Monroe Ave., Suite 700
Memphis, TN 38103

On May 13, 2009, the Tennessee Bar Association ("TBA") filed its petition requesting the Court to adopt an amended Rule 8 of the Rules of the Tennessee Supreme Court, comprised of the Tennessee Rules of Professional Conduct, to govern the conduct of lawyers licensed or practicing in Tennessee. On June 22, 2009, the Court published the TBA's proposed revisions for public comment and established December 16, 2009 as the deadline for public comments. The TBA requested an opportunity to submit a response to the public comments. The Court issued an Order on January 8, 2010 providing the TBA until February 19, 2010 to file a response to the public comments received, indicating that the TBA could provide substantial assistance to the Court by "identifying the comments with which the TBA agrees, by suggesting modifications and refinements in response to the comments, and by identifying the areas about which the TBA and the commentors still have substantial disagreement." In response to the public comments received, and in continuing support of the adoption of amendments to the Rules of Professional Conduct, the TBA now provides its response as follows:

I. THE TBA'S REVIEW OF THE PUBLIC COMMENTS RECEIVED

More than 110 pages of public comments were filed in response to the Court's invitation. Public comments were submitted by the following groups – the Board of Professional Responsibility, the Tennessee District Attorneys General Conference, the Tennessee District Public Defenders Conference, the U.S. Attorneys for the Western, Middle, and Eastern Districts of Tennessee, the Memphis Bar Association, the Nashville Bar Association, the Christian Legal Society, and the Tennessee Association of Professional Mediators. In addition, public comments were submitted by more than 25 individual attorneys. In order to prepare this response to those comments, all of the public comments received were evaluated. First, the TBA's Standing Committee on Ethics and Professional Responsibility reviewed and discussed the public

comments, including during two meetings in January 2010. The TBA Standing Committee on Ethics & Professional Responsibility then presented to the TBA Executive Committee its recommendations with respect to the TBA's response to the public comments. The TBA's Executive Committee, after substantial discussion and consideration, adopted those recommendations.

The TBA is grateful for the input of all who filed public comments. As indicated below, those comments have led to a number of revisions to the TBA's proposal. There also were a number of aspects of the public comments that set forth suggestions with which the TBA respectfully disagrees. Attached as Exhibit A is a copy of the TBA's recommendations regarding the public comments. Exhibit A is organized in order of the rules implicated by the public comments received and provides detailed responses as to each of the aspects of the public comments within the context of the rules they touch upon. The TBA believes that Exhibit A appropriately sets forth for the Court's review the TBA's analysis and reasoning with respect to those areas about which the TBA and the commentors still have substantial disagreement.[1]

In light of the public comments received, the TBA proposes that the Court adopt a revised Tennessee Supreme Court Rule 8 in the version attached as Exhibit B. As with its original petition, the TBA also remains pleased to provide the Court with any other assistance the Court requires as an aid to understanding any aspect of the TBA's revised proposal. The TBA has also attached to this response two complete redlines that compare the TBA's revised proposal for amending Rule 8 to, respectively, the current Tennessee Rules of Professional Conduct (Exhibit C) and the current ABA Model Rules of Professional Conduct (Exhibit D).

In addition to its revisions to its proposal being reflected in each of Exhibits B-D, and in

[1] Exhibit A also provides some additional insight into the TBA's analysis with respect to the revisions it has made to its original proposal in light of the public comments received.

order to further assist the Court with respect to those aspects of the TBA's prior proposal that the TBA has modified in light of the public comments received, the TBA in Section II below is setting forth a detailed description, organized by pertinent rule, of the revisions the TBA has made to specific parts of its original proposal.

II. THE TBA'S REVISIONS TO ITS ORIGINAL PROPOSED RULES REVISIONS

As a result of a number of very helpful suggestions contained in the public comments, and as a result of further hard work, study, and consideration by the members of the TBA Standing Committee on Ethics & Professional Responsibility, the TBA concluded that revisions to its prior proposal were in order. Specifically, and as is reflected in Exhibits B-D, the TBA has revised its proposal in the following specific respects:

- **RPC 1.5: FEES**

The Board of Professional Responsibility submitted comments with respect to the TBA's original proposal as to Rule 1.5 that led the TBA to conclude that a number of further revisions to its proposal were merited. Specifically, the Board expressed an opinion that a writing requirement should be imposed with respect to nonrefundable fees given that nonrefundable fees are a common subject of complaints to the Board. In light of that comment, and after significant discussion, the TBA has revised its original proposal to provide a clear requirement of a signed writing as to nonrefundable fees under the rules. Specifically, the TBA has revised its proposal as to Rule 1.5 to include a new (f), similar in nature to the writing requirement imposed as to contingent fees, which would provide as follows:

> (f) A fee that is nonrefundable in whole or in part shall be agreed to in a writing, signed by the client, that explains the intent of the parties as to the nature and amount of the nonrefundable fee.

In addition, and in order to provide clear and helpful guidance as to this requirement, the TBA's revised proposal breaks comment [4] into two comments, [4] and [4a]. Set forth below is a redline reflecting these revisions compared to the TBA's original proposal for comment [4] to RPC 1.5:

> [4] A lawyer may require advance payment of a fee, but is obliged to return any unearned portion. *See* RPC 1.16(d). The obligation to return any portion of a fee does not apply, however, if the lawyer charges a reasonable nonrefundable fee.
>
> [4a] A nonrefundable fee is one that is paid in advance and earned by the lawyer when paid. Nonrefundable fees, like any other fees, are subject to the reasonableness standard of paragraph (a) of this Rule. In determining whether a particular nonrefundable fee is reasonable, or whether it is reasonable to charge a nonrefundable fee at all, a lawyer must consider the factors that are relevant to the circumstances. Recognized examples of appropriate nonrefundable fees include a nonrefundable retainer paid to ~~retainer by which the lawyer is~~ compensated ~~the~~ lawyer for being available to represent the client in one or more matters or where~~.~~ ~~Nor does the obligation to return any portion of a fee apply if~~ the client agrees to pay to the lawyer at the outset of the representation a reasonable fixed fee for the representation. Such fees are earned fees so long as the lawyer remains available to provide the services called for by the retainer or for which the fixed fee was charged. RPC 1.5(f) requires a writing signed by the client to make certain that l~~L~~awyers ~~should~~ take special care to assure that clients understand the implications of agreeing to pay a non-refundable fee. ~~retainer or a fixed fee payable in advance, and such agreements should be memorialized in a writing, preferably signed by the client.~~
>
> [4a~~b~~] A lawyer may accept property in payment for services . . . .

The Board also indicated its opinion that the writing requirements that arise when a lawyer seeks to change a fee agreement with a client in the middle of the representation should be highlighted, and, consistent with the TBA's proposal as to RPC 1.8, the TBA believes that a clear pointer to the relevant comment to RPC 1.8 should be added to comment [2] to RPC 1.5. Accordingly, the TBA has revised its original proposal to add a new sentence to the end of comment [2] as shown in redline form below:

[2] When the lawyer has regularly represented a client, they ordinarily will have evolved an understanding concerning the basis or rate of the fee and the expenses for which the client will be responsible. In a new client-lawyer relationship, however, an understanding as to fees and expenses must be promptly established. Generally, it is desirable to furnish the client with at least a simple memorandum or copy of the lawyer's customary fee arrangements that states the general nature of the legal services to be provided, the basis, rate or total amount of the fee and whether and to what extent the client will be responsible for any costs, expenses, or disbursements in the course of the representation. A written statement concerning the terms of the engagement reduces the possibility of misunderstanding. With respect to whether a writing is required when a lawyer seeks to change the terms of a fee agreement with a client, see RPC 1.8 cmt. [1].

Finally, with respect to Rule 1.5, the Board also indicated that it believed the Court should retain the provision currently in Rule 1.5(a)(9) providing that a lawyer's prior statements or advertisements with respect to the fees to be charged is a factor in determining reasonableness of a fee. Although the TBA has not revised its proposal in this respect, it does not oppose the Board's suggestion in this regard.

- **RPC 1.6: CONFIDENTIALITY OF INFORMATION**

In response to two separate comments helpfully spotting a typographical error in the TBA's original proposal as to the language in the first sentence of comment [2], the TBA has revised its proposal as to the first sentence of comment [2] as shown redlined below:

[2] A fundamental principle in the client-lawyer relationship is that, in the absence of the client's informed consent, the lawyer must not reveal information ~~relation~~relating to the representation. . . .

- **RPC 1.7: CONFLICT OF INTEREST: CURRENT CLIENTS**

A number of individual lawyers whose practice involves estate planning submitted identical public comments indicating concern regarding the TBA's proposal to delete the following two sentences from existing comment [17] (renumbered in the TBA's original proposal as comment [27]): "Resolution of conflicts of interest between family members

pursuant to this Rule must be consistent with the lawyer's duty of undivided loyalty to each client, but the lawyer may take into account the willingness of each individual client to accommodate the interests of the family as a whole or the individual interests of other family members." Some, but not all, of the comments, appeared to indicate a mistaken belief that this language in the comments somehow had the affect of changing, in estate planning matters, the black-letter requirements of RPC 1.7. These comments suggested that if the existing comment were deleted that estate planning lawyers would now have to get written conflict waivers when such is not currently required. Such assertions further support the TBA's belief that the language proposed to be deleted has the potential for being misleading.

All of the comments quoted extensively from a portion of the American College of Trust and Estate Counsel's ("ACTEC") Commentaries on the Model Rules of Professional Conduct.[2] In light of the concerns of lawyers in the estate planning area and their belief in the need for clear guidance, the TBA has revised its proposal to add the following language, patterned after, and

---

[2] The ACTEC commentaries language that each of the lawyers filing comments quoted from was the following:

> *General Nonadversary Character of Estates and Trusts Practice; Representation of Multiple Clients.* It is often appropriate for a lawyer to represent more than one member of the same family in connection with their estate plans, more than one beneficiary with common interests in an estate or trust administration matter, co-fiduciaries of an estate or trust, or more than one of the investors in a closely held business. . . . In some instances the clients may actually be better served by such a representation, which can result in more economical and better coordinated estate plans prepared by counsel who has a better overall understanding of all of the relevant family and property considerations. The fact that the estate planning goals of the clients are not entirely consistent does not necessarily preclude the lawyer from representing them. Advising related clients who have somewhat differing goals may be consistent with their interests and the lawyer's traditional roles as the lawyer for the "family." Multiple representation is also generally appropriate because the interests of the clients in cooperation, including obtaining cost effective representation and achieving common objectives, often clearly predominate over their limited inconsistent interests. Recognition should be given to the fact that estate planning is fundamentally nonadversarial in nature and estate administration is usually non adversarial.

ACTEC COMMENTARIES ON THE MODEL RULES OF PROFESSIONAL CONDUCT (4th ed. 2006), available online at: http://www.actec.org/public/Commentaries1.7.asp.

combining, two different portions of the ACTEC Commentaries[3] as a new comment [27a] to RPC 1.7:

> [27a] It is often appropriate for a lawyer to represent more than one member of the same family in connection with their estate plans, more than one beneficiary with common interests in an estate or trust administration matter, or co-fiduciaries of an estate or trust. Multiple representation in such contexts often can result in more economical and better coordinated plans prepared by counsel who has a better overall understanding of all of the relevant family and property considerations. Multiple representations of these kinds are appropriate where the interests of the clients in cooperation and achieving common objectives predominate over any inconsistent interests and where the lawyer complies with Rule 1.7's requirements as to informed consent. A lawyer may not represent clients whose interests actually conflict to such a degree that the lawyer cannot adequately represent their individual interests. Such conflicts of interest are so serious that Rule 1.7 prohibits a lawyer from undertaking or continuing representation of multiple clients even with the informed consent of each of the clients. See RPC 1.7(b)(1). Unless the plan involves the formation, modification, or termination of a consensual relationship between clients and the lawyer acts as an intermediary in compliance with RPC 2.2, undertaking such a multiple representation will be governed by this rule. See RPC 2.2 cmt [4].

- **RPC 1.14: CLIENT WITH DIMINISHED CAPACITY**

The Board of Professional Responsibility's comment raised an issue about potential negative connotations from the use of "suffers" or "suffers from" in comments [1] and [2] of the TBA's original proposal for revisions to this Rule. In order to avoid any potential for any such negative connotations, the TBA's revised proposal strikes that language from the comments and return to the current use of the verb "has" as reflected in the redline below:

---

[3] In addition to the portion of the ACTEC Commentaries set forth in footnote 1 above, the TBA also looked to another portion of the ACTEC Commentaries providing:

> *Conflicts of Interest May Preclude Multiple Representation.* Some conflicts of interest are so serious that the informed consent of the parties is insufficient to allow the lawyer to undertake or continue the representation (a "non-waivable" conflict). Thus, a lawyer may not represent clients whose interests actually conflict to such a degree that the lawyer cannot adequately represent their individual interests. . . . On the other hand, if the actual or potential conflicts between competent, independent parties are not substantial, their common interests predominate, and it otherwise appears appropriate to do so, the lawyer and the parties may agree that the lawyer will represent them jointly subject to MRPC 1.7 . . . or act as an intermediary pursuant to former MRPC 2.2.

ACTEC COMMENTARIES ON THE MODEL RULES OF PROFESSIONAL CONDUCT (4th ed. 2006), available online at: http://www.actec.org/public/Commentaries1.7.asp.

[1] The normal client-lawyer relationship is based on the assumption that the client, when properly advised and assisted, is capable of making decisions about important matters. When the client is a minor or ~~suffers from~~has a diminished mental capacity, however, maintaining the ordinary client-lawyer relationship may not be possible in all respects . . . .

[2] The fact that a client ~~suffers~~has a disability does not diminish the lawyer's obligation to treat the client with attention and respect. Even if the person has a legal representative, the lawyer should as far as possible accord the represented person the status of client, particularly in maintaining communication.

- **RPC 1.16: DECLINING OR TERMINATING REPRESENTATION**

In response to a comment from the Board of Professional Responsibility, the TBA has revised the language at the beginning of its proposed RPC 1.16(d) to more clearly set out: (1) that what is required of the lawyer is to take steps to protect the client's interests to the extent reasonably practicable; and (2) enumerated examples of the kinds of actions that may be necessary to satisfy that requirement depending on the circumstances. The TBA's revised proposal as to RPC 1.16(d) sets forth the following as the first two sentences of that subsection:

(d) A lawyer who is discharged by a client, or withdraws from representation of a client, shall, to the extent reasonably practicable, take steps to protect the client's interests. Depending on the circumstances, protecting the client's interest may include: (1) giving reasonable notice to the client, (2) allowing time for the employment of other counsel, (3) cooperating with any successor counsel engaged by the client, (4) promptly surrendering all client file materials, as defined in RPC 1.19(b), and (5) promptly refunding any advance payment of fees or expenses that has not been earned or incurred.

- **RPC 1.18: DUTIES TO PROSPECTIVE CLIENTS**

In response to a comment from the Board of Professional Responsibility regarding potential for confusion in paragraph (c) of the proposed rule in the TBA's original proposal, the TBA has revised its proposal as to RPC 1.18(c) to replace the word "person" with the words "prospective client" as shown in redline format below:

(c) A lawyer subject to paragraph (b) shall not represent a client with interests materially adverse to those of a prospective client in the same or a

substantially related matter if the lawyer received information from the prospective client that could be significantly harmful to that ~~person~~prospective client in the matter, except as provided in paragraph (d). If a lawyer is disqualified from representation under this paragraph, no lawyer in a firm with which that lawyer is associated may knowingly undertake or continue representation in such a matter, except as provided in paragraph (d).

- **RPC 1.19: CLIENT FILE MATERIALS**

The Memphis Bar Association ("MBA") submitted a comment questioning the inclusion of "attorney notes" in the list of items set forth in proposed RPC 1.19(b)(5). In light of the concern expressed by the MBA, and, equally importantly, in light of the fact that the types of attorney notes that the TBA intended to be encompassed in its original proposal would be those that would also constitute "work product materials," the TBA has revised its proposal as to RPC 1.19(b)(5) to read as follows:

> Research materials and other work product prepared by the lawyer for the client related to the client's matter if the lawyer has received payment for creating those materials.

Similarly, the TBA has revised the first sentence of comment [2] to read as follows:

> Under paragraph (b)(5) of this Rule, research materials and other work product prepared by the lawyer for the client are client file materials only if the lawyer has received payment for creating that work product.

- **RPC 2.2: LAWYER SERVING AS AN INTERMEDIARY BETWEEN CLIENTS**

The Board of Professional Responsibility's comments helpfully pointed out that the TBA's original proposal as to (c)(3) of this rule redundantly included the word "shall." In response, the TBA has revised its proposal to eliminate that redundancy as redlined below:

(c) While representing clients as an intermediary, the lawyer shall:

(1) act impartially to assist the clients in accomplishing their common objective;

(2) as between the clients, treat information relating to the intermediation as information protected by RPC 1.6 that the lawyer has been authorized by each client to disclose to the other clients to the extent the lawyer reasonably believes necessary for the lawyer to comply with RPC 1.4; and

(3) ~~shall~~ discuss with each client the decisions to be made with respect to the intermediation and the considerations relevant in making them, so that each client can make adequately informed decisions.

- **RPC 3.1: MERITORIOUS CLAIMS AND CONTENTIONS**

The Board of Professional Responsibility's comments indicated a belief that certain language in current comment [3] of Tennessee's rule regarding what a lawyer representing a defendant in a criminal matter may and may not do should be retained. In light of the fact that the language the TBA included in its original proposal, patterned after the ABA Model Rule comment does not differ substantively from Tennessee's current comment, the TBA has now revised its proposal with respect to comment [3] to simply retain Tennessee's existing comment [3] language, which reads:

> [3] Although this Rule does not preclude a lawyer for a defendant in a criminal matter from defending the proceeding so as to require that every element of the case be established, the defense lawyer must not file frivolous motions and must give notice to the prosecution if the lawyer decides to abandon an affirmative defense that the lawyer had previously indicated would be presented in the case.

- **RPC 3.7: LAWYER AS WITNESS**

The Memphis Bar Association's comments brought to the TBA's attention the fact that the language in the TBA's original proposal as to comment [3] appeared to be too restrictive when compared to the black-letter of the rule. Accordingly, the TBA has now revised its proposal, consistent with what the black-letter of the rule says, to add the words "at trial" after "advocate" in the first sentence of that comment as shown in redline format below:

[3] To protect the tribunal, paragraph (a) prohibits a lawyer from simultaneously serving as advocate at trial and necessary witness except in those circumstances specified in paragraphs (a)(1) through (a)(3).

- **RPC 3.8: SPECIAL RESPONSIBILITIES OF PROSECUTORS**

In response to an informal comment received regarding an incongruity between what comment [6] in the TBA's original proposal indicated was required by (g) and what (g) of the rule set forth in the original proposal actually said, the TBA has revised its proposal as redlined below:

[6] When a prosecutor knows of new, credible and material evidence creating a reasonable likelihood that a person outside the prosecutor's jurisdiction was convicted of a crime that the person did not commit, paragraph (g) requires ~~prompt disclosure to the court or other appropriate authority, such as the chief prosecutor of the jurisdiction where the conviction occurred. If the conviction was obtained in the prosecutor's jurisdiction, paragraph (g) requires~~ the prosecutor to examine the evidence and undertake further investigation to determine whether the defendant is in fact innocent or make reasonable efforts to cause another appropriate authority to undertake the necessary investigation~~, and to disclose the evidence to the court and, absent court-authorized delay, to the defendant within a reasonable period of time, as circumstances dictate. Consistent with the objectives of RPCs 4.2 and 4.3, disclosure to a represented defendant must be made through the defendant's counsel, and, in the case of an unrepresented defendant, would ordinarily be accompanied by a request to a court for the appointment of counsel to assist the defendant in taking such legal measures as may be appropriate~~.

- **RPC 4.1: TRUTHFULNESS IN STATEMENTS TO OTHERS**

The Board of Professional Responsibility's comment helpfully identified that the TBA's original proposal likely should not have stricken the words "or law" from the first sentence of comment [1] to this rule. In response to that comment, the TBA has revised its proposal to return the words "or law" to comment [1] as shown in redline format below:

[1] A lawyer is required to be truthful when dealing with others on a client's behalf, but generally has no affirmative duty to inform an opposing party of relevant facts or law. A misrepresentation can occur if the lawyer incorporates or affirms a statement of another person that the lawyer knows is false. Misrepresentations can also occur by partially true but misleading statements or

omissions that are the equivalent of affirmative false statements. For dishonest conduct that does not amount to a false statement or for misrepresentations by a lawyer other than in the course of representing a client, see RPC 8.4.

- **RPC 5.3: RESPONSIBILITIES REGARDING NONLAWYER ASSISTANTS**

The Board of Professional Responsibility's comments helpfully suggested that the word "nonlawyer" would be better used in place of the word "person" in (c)(2) of the TBA's original proposal. In response, the TBA has revised its proposal as to this portion of the rule as shown below in redline format:

> (c) a lawyer shall be responsible for conduct of a nonlawyer that would be a violation of the Rules of Professional Conduct if engaged in by a lawyer if:
>
> (1) the lawyer orders or, with knowledge of the specific conduct, ratifies the conduct involved; or
>
> (2) the lawyer is a partner or has comparable managerial authority in the law firm in which the ~~person~~nonlawyer is employed, or has direct supervisory authority over the nonlawyer, and knows of the nonlawyer's conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

- **RPC 7.3: SOLICITATION OF POTENTIAL CLIENTS**

The Board of Professional Responsibility's comment again caught an incongruity in the TBA's original proposal with respect to the use of the word "prospective" in (c)(5) and (c)(6) as to this rule and helpfully suggested that word be replaced with "potential." In response to this comment, and especially given the TBA's proposal for a new RPC 1.18 that would refer to "prospective clients," the TBA has revised its proposal to replace "prospective" with the better and more accurate word "potential" in subsection (c) of this rule as shown in the redline below:

> (5) Communications delivered to ~~prospective~~potential clients shall be sent only by regular U.S. mail and not by registered, certified, or other forms of restricted delivery, or by express delivery or courier.

(6) Any communication seeking employment by a specific ~~prospective~~potential client in a specific matter shall comply with the following additional requirements:

(i) The communication shall disclose how the lawyer obtained the information prompting the communication;

(ii) The subject matter of the proposed representation shall not be disclosed on the outside of the envelope (or self-mailing brochure) in which the communication is delivered; and

(iii) The first sentence of the communication shall state, "IF YOU HAVE ALREADY HIRED OR RETAINED A LAWYER IN THIS MATTER, PLEASE DISREGARD THIS MESSAGE."

III. THE TBA'S ADDITIONAL REVISIONS TO EXHIBIT C TO REFLECT THE COURT'S ADOPTION OF REVISIONS TO RPCs 1.15, 5.5, 6.1, 6.5, AND 8.5 IN 2009

As with its original petition, the TBA has again attached, as Exhibit C, a complete redline comparing the TBA's proposed revised Rules to the current Tennessee Rules of Professional Conduct. In light of the Court's orders in 2009 that enacted revisions to RPCs 1.15, 5.5, 6.1, 6.5, and 8.5 in 2009, the TBA wanted to make sure to draw the Court's attention to the fact that the TBA has revised Exhibits C and D to appropriately reflect those 2009 rules revisions and, as to Exhibit C, to appropriately show the redlining of any further changes to those newly-enacted rules that the TBA is proposing be made.

As the Court will see from a review of those aspects of Exhibit C, these additional proposed revisions are almost entirely related to formatting and definitional cross-references, with the exception of certain changes to RPC 1.15 that the TBA had previously proposed that did not relate to Interest on Lawyer's Trust Account ("IOLTA") issues.

CONCLUSION

The TBA is grateful for the opportunity to provide this further submission in response to the public comments received and is pleased by the robust number and thoughtful nature of the public comments that were submitted to the Court. For the reasons set forth by the TBA in its original petition and in this filing, the TBA petitions this Court to adopt an amended Rule 8 of the Rules of the Tennessee Supreme Court, comprised of the Tennessee Rules of Professional Conduct, to govern the conduct of lawyers licensed or practicing in Tennessee in the form that is attached to this filing as Exhibit B.

/s/ Gail Vaughn Ashworth *by permission by Brian S. Faughnan*
GAIL VAUGHN ASHWORTH (Tenn. BPR No. 10656)
President, Tennessee Bar Association
Gideon & Wiseman PLC
200 4th Ave. N., 1100 Noel Place
Nashville, TN 37219
Tel: (615) 254-0400

/s/ Sam Elliott *by permission by Brian S. Faughnan*
SAM D. ELLIOTT (Tenn. BPR No. 9431)
President-Elect, Tennessee Bar Association
Gearhiser, Peters, Cavett,
Elliott & Cannon, PLLC
320 McCallie Ave.
Chattanooga, TN 37402
Tel: (423) 266-1605

/s/ George T. Lewis, III *by permission by Brian S. Faughnan*
GEORGE T. LEWIS, III (Tenn. BPR No. 7018)
Immediate Past President
Tennessee Bar Association
Baker, Donelson, Bearman, Caldwell & Berkowitz, P.C.
165 Madison Avenue, Suite 2000
Memphis, Tennessee 38103
Tel: 901-526-2000

/s/ Bill Harbison *by permission by Brian S. Faughnan*
BILL HARBISON (Tenn. BPR No. 007012)
General Counsel, Tennessee Bar Association
Sherrard & Roe, PLC
424 Church Street, Suite 2000
Nashville, TN 37219
Tel: 615-742-4200

/s/ Allan F. Ramsaur *by permission by Brian S. Faughnan*
ALLAN F. RAMSAUR (Tenn. BPR No. 5764)
Executive Director, Tennessee Bar Association
221 4th Avenue North, Suite 4000
Nashville, Tennessee 37205
Tel: 615-383-7421

BRIAN S. FAUGHNAN (Tenn. BPR No. 19379)
Chair, Tennessee Bar Association
Standing Committee on Ethics
and Professional Responsibility
Adams and Reese LLP
Brinkley Plaza
80 Monroe Avenue, Suite 700
Memphis, Tennessee 38103-2467
Tel: 901-524-5280

/s/ Lucian T. Pera *by permission by Brian S. Faughnan*
LUCIAN T. PERA (Tenn. BPR No. 11641)
Immediate Past Chair, Tennessee Bar Association
Standing Committee on Ethics
and Professional Responsibility
Adams and Reese LLP
Brinkley Plaza
80 Monroe Avenue, Suite 700
Memphis, Tennessee 38103-2467
Tel: 901-524-5278

CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the foregoing will be served by electronic mail notification and by mailing an electronic version of the entire proposal, within seven days of the filing of this document, upon the individuals and organizations identified in Exhibit E to this response by regular U.S. Mail, postage prepaid.

ALLAN F. RAMSAUR

684312-1